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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------|------------------|
| 10/608,872   | 06/26/2003  | Richard Hunter Harris | RPS920020124US1     | 7859             |
| 45219  | 7590        | 05/19/2005            | EXAMINER            |                  |
| KUNZLER & ASSOCIATES<br>8 EAST BROADWAY<br>SUITE 600<br>SALT LAKE CITY, UT 84111 |             |                       | WALSH, DANIEL I     |                  |
|  |             | ART UNIT              | PAPER NUMBER        |                  |
|  |             | 2876                  |                     |                  |

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|------------------------------|------------------------|---------------------|
|                              | 10/608,872             | HARRIS ET AL.       |
| Examiner                     | Art Unit               |                     |
| Daniel I. Walsh              | 2876                   |                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 February 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-5,7-19 and 21-30 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5, 7-19, and 21-30 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

## DETAILED ACTION

1. Receipt is acknowledged of the RCE of 25 February 2005.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-4, 7-10, 12-18, and 21-25, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (US 5,497,314).

Re claim 1, Novak teaches a processor configured to execute executable data structures (FIG. 4 and FIG. 5), a memory device connected to the processor for storing the executable data structures (FIG. 4 and FIG. 5), the executable and operational data structures comprising a reader module configured to read a coded identifier associated with the item (barcode scanner 16, see

FIG. 1 and col 8, lines 22-33, and FIG. 16); a capture module configured to capture a visual characteristic of the item, independent of the coded identifier (camera 10). The Examiner contends that the microprocessor (FIG. 4) and/or the system CPU (FIG. 5) perform the functions of the association and verification modules claimed (see FIG. 4 and FIG. 4, col 8, lines 22-33 and abstract). Accordingly, the Examiner maintains that it would have been obvious to one of ordinary skill in the art that processes executed by the microprocessor/CPU be stored data structures/instructions, as such means are well known and conventional in the art for performing processor applications. Additionally, the Examiner notes that Novak teaches that barcodes can be read either by reader 16 as a secondary recognition device or from the captured image data (claim 16).

Re claim 2, it has been discussed above that a camera is used to capture a visual image(s) and accordingly, a visual signature can be used to identify the item (col 4, lines 1+ and col 5, lines 20+). Various unique identification information/statistics are generated from the images, and thus is broadly interpreted as a signature. Additionally, the Examiner notes that identifying by visual signatures is well known in the art.

Re claim 3, Novak teaches confirming with a user the identity of the item based on the visual characteristic (col 5, lines 5+). Though silent to a confirmation module, the Examiner notes that the steps/instructions of such a teaching of confirmation is broadly interpreted to read upon a confirmation module.

Re claim 4, the limitations have been discussed above re claim 3.

Re claim 7, Novak teaches a weight module (FIG. 4).

Re claim 8, Novak teaches that the characteristics can be selected from the claimed group

(col 6, lines 28+). The Examiner also notes that it is well known to use such criteria for item identification (see Hertz et al. as cited in the previous Office Action).

Re claim 9, the limitations have been discussed above re claim 3. The Examiner notes that reading of the barcode and visual capturing are separate and independent.

Re claim 10, the limitations have been discussed above re claim 4.

Re claim 12, the limitations have been discussed above re claim 7.

Re claims 13-15, the limitations have been discussed above re claim 1. Additionally, the Examiner notes that system CPU is networked to the checkout stations (FIG. 5). This is broadly interpreted as remote to the checkout stations. The Examiner also notes that server means for assisting in item recognition are well known and conventional in the art, to provide the expected results of sharing resources (see Seevers et al. as discussed in the previous Office Action). As discussed above re claim 9, the reading of the barcode and visual capturing are independent.

Re claim 16, the limitations have been discussed above re claim 1. As discussed above re claim 9, capturing and reading are independent.

Re claim 17, the limitations have been discussed above re claim 3.

Re claim 18, the limitations have been discussed above re claim 4.

Re claim 21, the limitations have been discussed above re claim 2.

Re claim 22, the limitations have been discussed above re claim 7.

Re claim 23, the limitations have been discussed above re claim 8.

Re claim 24, the limitations have been discussed above re claim 1. As discussed above re claim 9, reading and capturing are independent.

Re claim 25, the limitations have been discussed above re claim 3.

Re claim 27, the limitations have been discussed above re claim 1. As discussed above re claim 9, reading and capturing are independent.

Re claim 28, the limitations have been discussed above re claim 3.

Re claim 29, the limitations have been discussed above re claim 4.

3. Claims 5, 11, 19, 26, and 30, are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak, as discussed above, in view of Hertz et al. (as cited in the previous Office Action).

The teachings of Novak have been discussed above.

Novak is silent to a notification module notifying a user whether the coded identifier is associated with the item.

Hertz et al. teaches such limitations (col 7, lines 1+) as Hertz et al. teaches verifying that the visual and barcode data corresponds.

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of Novak with those of Hertz et al.

One would have been motivated to do this in order to provide additional checks to ensure that an item is accurately identified.

#### *Response to Arguments*

4. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

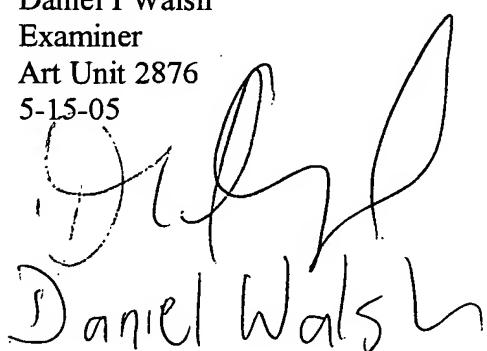
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel I Walsh  
Examiner  
Art Unit 2876  
5-15-05

A handwritten signature in black ink, appearing to read "Daniel I. Walsh". The signature is fluid and cursive, with the first name "Daniel" and the last name "Walsh" clearly legible.